

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION**

Benjamin T. Zeigler,

Plaintiff,

v.

United States Department of Agriculture –
Farm Service Agency,

Defendant.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

The Plaintiff Benjamin T. Zeigler (“Plaintiff”) hereby complaining of the Defendant United States Department of Agriculture – Farm Service Agency (“Defendant”) would show unto the Court as follows:

INTRODUCTION AND BACKGROUND

1. Plaintiff brings this action pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (the “Act”).

2. Through this action, Plaintiff seeks the disclosure of agency records requested from Defendant relating to emails and/or other correspondence of Kyle Daniel, who was or currently is the Defendant’s Farm Service Agency Director for Georgetown County, South Carolina.

3. Said Freedom of Information Act Request (“Request”) was made on or about September 20, 2018 through certified mail. The September 20, 2018 request is attached hereto and incorporated herein as **Exhibit A**.

4. On October 2, 2018, Kennerly O. Jameson (“Jameson”), as an administrative officer of Defendant, confirmed that the Request had been received and that Defendant was assigning it control number 45-000-2018-000007.

5. The October 2, 2018 email is attached hereto and incorporated herein as **Exhibit B**.

6. Jameson asked that due to the “voluminous amount of emails” whether key phrases or search terms could be utilized to aid in the search.

7. By October 25, 2018, Plaintiff willfully obliged, providing a litany of search terms and even reducing the applicable time-period of the Request from 2006 to present to 2012 to present.

8. For weeks, Plaintiff heard nothing from Defendant, where finally on November 19, 2018 Plaintiff sought a status update on the Request.

9. The November 19, 2018 email is attached hereto and incorporated herein as **Exhibit C**.

10. In response, Jameson forwarded an email from a member of the USDA eComply Team dated November 7, 2018, who stated, “We will attend to your request and provide you with the status by Wednesday 12/5/2018 6:00 PM EST.”

11. The November 7, 2018 email is attached hereto and incorporated herein as **Exhibit D**.

12. Having received no word or documents by December 5, 2018, Plaintiff again followed up with Defendant on January 3, 2019, where an automatic reply was returned by Jameson, which said, “I am not in the office at this time. I am on furlough without access to email, due to the lapse in federal government funding. I will return your message as soon as possible once funding has been restored.”

13. The January 3, 2019 email is attached hereto and incorporated herein as **Exhibit E**.

14. On January 29, 2019, Plaintiff again followed up and a response was made by Jameson that he would “follow-up on your request with the National Office.”

15. The January 29, 2019 email is attached hereto and incorporated herein as **Exhibit F.**

16. More weeks passed, and hearing nothing, Plaintiff follow up on February 14, 2019 and a response was made by Jameson on February 19, 2019 that, “We are working through the backlog of when we were furloughed. I hope to have you more information this week.”

17. The February 19, 2019 email is attached hereto and incorporated herein as **Exhibit G.**

18. Growing increasingly frustrated, Plaintiff advised that if the Request was not complied with by March 8, 2019, he would seek legal redress.

19. On March 7, 2019, Jameson stated:

We apologize for the amount of time that this request has taken to fulfill. However, this request is still in the review process. You were advised that we were taking a time extension in order to properly process your request, due to the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records. Unfortunately, the government shutdown has had an adverse effect on processing your request as well.

20. The March 7, 2019 email is attached hereto and incorporated herein as **Exhibit H.**

21. This is the first indication Plaintiff was given that throughout this months-long period Defendant considered the Request to be in the “review process” when Plaintiff had already shortened his initial request in-half and provided a litany of search terms to reduce the nature of the Request.

22. Moreover, the *sua sponte* statement that there was a “time extension” was never agreed to by Plaintiff nor present in any prior correspondence.

23. On April 5, 2019, Defendant wrote Plaintiff and stated the total fee to comply with the Request would be Three Thousand Two Hundred Seventy and 92/100 (\$3,270.92) Dollars.

24. In the April 5, 2019 correspondence, Defendant references once more that it advised Plaintiff it was “taking a time extension in order to properly process your request” though none was in fact agreed too.

25. In the April 5, 2019 correspondence as well, no exemptions are made or acknowledged by Defendant.

26. Payment was duly made by Plaintiff shortly thereafter and mailed to Defendant on or about May 8, 2019.

27. Months passed and Plaintiff received no documents.

28. In late July 2019, a fractional number of documents were received from Defendant pursuant to the Request, whereupon Defendant admitted thereafter it was still waiting on “files from our National Office concerning this request.”

29. The undersigned counsel then remitted correspondence to Defendant based on its failure to comply with the Request, where, thereafter, Defendant stated on September 10, 2019:

We continue to work on your FOIA Request 45-000-2018-000007. As we receive the files from our National FOIA Team, we will get them to use as quickly as possible. We have to review the files in order to determine what we are allowed to release to you. All information is not able to be released based on the FOIA Exemptions.

30. The September 10, 2019 email is attached hereto and incorporated herein as **Exhibit I.**

31. This was the first mention of an exemptions, the period to claim of which had longed passed, and indicated that all of the responsive documents were still not even yet in a producible form.

JURISDICTION

32. Plaintiff is an individual resident of Florence County, South Carolina.

33. Defendant is an independent agency of the United States government. Defendant is in possession, custody, and control of records that Plaintiff seeks, and as such, it is subject to The Freedom of Information Act (the “Act”) pursuant to 5 U.S.C. § 552(f) and is duly obligated and responsible for fulfilling requests made under the Act.

CLAIM FOR RELIEF ONE
(Violation of the Freedom of Information Act – Mandatory Determination Deadline)

34. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

35. Plaintiff properly requested records within the control of Defendant through his September 20, 2018 Request and later amendments thereby limiting the scope of the Request, identified as control number 45-000-2018-000007.

36. The Plaintiff has the statutory right to have the Request processed in a manner that complies with the Act. *See* Act § 552(a)(3).

37. Defendant has violated the Act and the Plaintiff’s rights in this regard by unlawfully delaying a determination under the Act. *See* Act § 552(a)(6)(A)(i).

38. Based on the suspected nature of the contents of the records, Plaintiff may continue to employ the Act’s provision in public record requests to Defendant in the foreseeable future.

39. Plaintiff has constructively exhausted its administrative remedies with respect to this claim because Defendant did not make and communicate a “determination” within the meaning of 5 U.S.C. § 552(a)(6)(A)(i) within 20 working days of receiving the Plaintiff’s Request. *See* Act § 552(a)(6)(C)(i).

40. Plaintiff is entitled to declaratory and injunctive relief, as well as its reasonable costs of litigation, as a result of the Defendant’s continued failure to comply with the Act’s mandatory determination deadline.

CLAIM FOR RELIEF TWO
(Violation of the Freedom of Information Act – Prompt Disclosure)

41. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

42. Plaintiff has a statutory right to have his Request processed by Defendant in a manner that complies with the Act. *See* Act § 552(a)(3).

43. Defendant has violated the Act and the Plaintiff’s rights in this regard by failing to promptly provide all responsive records related to the Request. *See* Act § 552(a)(3)(A), (a)(8), (b).

44. Based on the suspected nature of the contents of the records, Plaintiff may continue to employ the Act’s provision in public record requests to Defendant in the foreseeable future.

45. Plaintiff has constructively exhausted its administrative remedies with respect to this claim because Defendant did not make and communicate a “determination” within the meaning of 5 U.S.C. § 552(a)(6)(A)(i) within 20 working days of receiving the Plaintiff’s Request. *See* Act § 552(a)(6)(C)(i).

46. Moreover, Defendant has failed to make “promptly available” responsive documents to the Request which is in violation of the Act and the Plaintiff’s rights. *See* Act § 552(a)(6)(C)(i).

47. Plaintiff is entitled to declaratory and injunctive relief, as well as its reasonable costs of litigation, as a result of the Defendant’s improper withholding of the requested documents.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays that this Court:

A. Declare that the Defendant violated the Act by failing to lawfully satisfy Plaintiff’s Request, given control number 45-000-2018-000007; and,

B. Order Defendant to produce, by a date certain, all records and responsive documents to the Request, given control number 45-000-2018-000007, and a *Vaugh* index of any responsive records or portion of responsive records withheld under a claim of exemption, at no to Plaintiff; and,

C. Enjoin Defendant from continuing to withhold nonexempt responsive records subject to the Request; and,

D. Retain jurisdiction over this action to ensure the appropriate processing of Plaintiff's Request and that no agency records or portion of the records are improperly withheld; and,

E. Award Plaintiff his reasonable attorneys' fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E) or 28 U.S.C. § 2412; and,

F. Grant any such further relief as the Court may deem just and proper.

Florence, South Carolina

HAYNSWORTH SINKLER BOYD, P.A.

September 18, 2019

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